

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

MICHAEL P. BISCHOFF,

Petitioner,

vs.

CASE NO. 04-74383  
HON. LAWRENCE P. ZATKOFF  
MAGISTRATE JUDGE PAUL J. KOMIVES

UNITED STATES OF AMERICA,

Respondent.

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**ORDER DENYING CERTIFICATE OF APPEALABILITY**

This matter is before the Court for a determination as to whether a certificate of appealability should issue in this matter. “In a habeas corpus proceeding in which the detention complained of arises from process issued by a state court, or in a 28 U.S.C. § 2255 proceeding, the applicant cannot take an appeal unless” a certificate of appealability is issued under 28 U.S.C. § 2253(c). FED. R. APP. P. 22(b)(1). A certificate of appealability may be issued “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). In order to make such a substantial showing, a petitioner must show that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The Court must individually evaluate each issue raised by Petitioner, *see Murphy v. Ohio*, 263 F.3d 466, 467 (6<sup>th</sup> Cir. 2001), and shall specify the issue or issues upon which Petitioner has made a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(3). If the Court declines to issue a certificate of appealability, it must state why it is declining to issue one. *See* FED. R. APP. P. 22(b)(1).

Petitioner requests a certificate of appealability on the following two issues:

- I. Petitioner's sentence violated the revocation table in U.S.S.G. § 7B1, and Petitioner was sentenced using an illegal mandatory sentencing scheme.
- II. Petitioner's counsel was ineffective for failing to object to the violation charges, and to the sentence.

The Court has reviewed each issue presented, as well as the supporting materials. For the reasons stated in the Magistrate Judge's Report and Recommendation, adopted in part by the Court's November 10, 2005, Opinion and Order, Petitioner's request for a certificate of appealability is DENIED on each issue presented, because Petitioner cannot make a substantial showing of a denial of a constitutional right on any issue. Accordingly, IT IS ORDERED that no certificate of appealability shall issue in this matter.

IT IS SO ORDERED.

s/Lawrence P. Zatkoff

LAWRENCE P. ZATKOFF

UNITED STATES DISTRICT JUDGE

Dated: January 18, 2006

#### CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on January 18, 2006.

s/Marie E. Verlinde

Case Manager

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